

1 **AN ORDINANCE TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT**
2 **AND PROMOTE ENVIRONMENTAL JUSTICE (draft of 03/18/2011)**

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28 **RECITALS:**

29 1. WHEREAS the New Jersey Constitution provides in Article I, ¶ 1 that: "All persons
30 are by nature free and independent, and have certain natural and unalienable rights,
31 among which are those of enjoying and defending life and liberty, of acquiring,
32 possessing, and protecting property, and of pursuing and obtaining safety and happiness";
33 and

34 2. WHEREAS, N.J.S.A. 40:48-2 provides that: "Any municipality may make and enforce
35 such ordinances, regulations, rules and by-laws not contrary to the laws of this state or of
36 the United States, as it may deem necessary and proper for the good government, order
37 and protection of persons and property, and for the preservation of the public health,
38 safety and welfare..."

39 3. WHEREAS, the New Jersey Department of Environmental Protection (NJDEP) was
40 established in 1970, N.J.S.A. 13:1B-1, et seq., to protect the natural and human
41 environment by regulating certain human activities that may directly or indirectly impact
42 the environment;

43 4. WHEREAS, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1, et seq.,
44 provides the legal and public policy foundation for municipalities to "guide the
45 appropriate use or development of all lands in this State", and to "secure safety from fire,
46 flood, panic and other natural and man-made disasters," among other goals and purposes;
47 and

48 5. WHEREAS, to protect public health, counties and municipalities are empowered to
49 establish Boards of Public Health, N.J.S.A. 26:3A2-1, et seq.

50 6. WHEREAS, the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:10A-
51 1, et seq., provides for the designation of “blighted areas” or “areas in need of
52 redevelopment,” which designations authorize the taking of private property for transfer
53 to a designated “redeveloper” for redevelopment purposes; and

54 7. WHEREAS, the beneficial purposes of the LRHL sometimes lead to the designation of
55 properties or neighborhoods as “in need of redevelopment” without sufficient regard for
56 the detrimental impacts of such designations on areas of lower income, racial and ethnic
57 minorities, the elderly or other vulnerable populations.

58 8. WHEREAS, also pursuant to the LRHL initiatives, vulnerable populations may be
59 uprooted and displaced without adequate attention to, or compensation for, replacement
60 housing and property.

61 9. WHEREAS, other actions and decisions of the Township, including the revaluation
62 and assessment of property for taxation purposes, may also inadvertently have a
63 disproportionately negative impact on lower income communities or areas of racial and
64 ethnic minorities; and

65 10. WHEREAS, to protect human health and the environment for the benefit of all
66 populations, municipal decision-makers need accurate information about the impacts of
67 proposed action, including impacts on the determinants of health and the environment,
68 and how those determinants will be impacted by municipal decision making; and

69 11. WHEREAS, the methods for protecting the environment and human health and the
70 gathering of such information includes the “Environmental Impact Statement” and the
71 “Environmental Commission,” N.J.S.A. 40:56A-1, et seq.; and

72 12. WHEREAS, in many communities, indicators of public health, such as lung disease,
73 diabetes, cancers, and other infirmities, are worsening, particularly for vulnerable
74 populations, including but not limited to infants, children, elderly, ailing and disabled,
75 persons of low income or subject to socioeconomic “stressors” of race, ethnicity, and
76 other aspects of the “social determinants of health,” as defined by the World Health
77 Organization; and

78 13. WHEREAS some communities or neighborhoods are disproportionately burdened by
79 public health problems related to the cumulative impacts of poverty, blight, poor
80 walkability, degraded air and water, and other hazardous exposures; and

81 14. WHEREAS, individually some contaminants or impacts may be deemed safe enough
82 in isolation, but cumulatively they cause or contribute to significant harm for vulnerable
83 populations; and

84 15. WHEREAS many of these environmental and public health problems are preventable
85 through due diligence and legal enforcement; and

86 16. WHEREAS, municipalities and communities therein need policy tools to provide
87 residents protection and security from threats to public health and the environment, and to
88 promote Environmental Justice, as that standard of decision-making is defined and
89 clarified in Presidential Executive Order 12898 and its progeny;

90 THEREFORE, to protect human health and the environment, and to promote
91 principles of Environmental Justice to the fullest extent permitted by law, the [township]
92 [city] [borough] of ANYTOWN hereby adopts this ORDINANCE TO PROTECT
93 PUBLIC HEALTH AND THE ENVIRONMENT AND PROMOTE
94 ENVIRONMENTAL JUSTICE.

95 **1.0 DECLARATION OF POLICY**

96 The following shall be established as the public health, safety and environmental
97 policy of the Township [city, etc.] of ANYTOWN:

98 A. The environment is the subject of a public trust that must be protected and
99 administered for the benefit, safety and happiness of all township residents, present and
100 future, regardless of income, race, ethnicity or national origin.

101 B. In furtherance of this public trust, the Township has a fiduciary duty to prevent harm
102 to public health and the environment, which includes the early identification of risks and
103 the rendering of decisions in recognition of such risks.

104 C. Therefore, the Township will develop laws, policies and plans to protect the public
105 trust interests of all citizens and residents, to foster healthy communities, to create and
106 maintain a healthy, viable environment for current and future generations, and to become
107 a model of economic and environmental sustainability.

108 D. In furtherance of these policies, the Township further commits to:

109 1. Ensure the fair and equal treatment of all races, cultures and incomes with
110 respect to development or redevelopment, and enforcement of laws, regulations, policies,

111 and actions that affect public health and quality of the environment in a manner consistent
112 with principles of Environmental Justice; and

113 2. Take appropriate action to prevent or mitigate such harm, when such harm is
114 occurring or reasonably foreseeable, as may be seen in the review of development
115 applications or redevelopment initiatives, and other government action.

116 3. Encourage development or redevelopment proposals that will not
117 disproportionately impact public health or the environment or impose undue impacts on
118 racial or ethnic minorities or lower income residents, and to withhold approval of such
119 proposals that fail to meet these standards, frequently referenced as Environmental Justice
120 factors, to the extent permitted by governing law.

121 4. Identify, prevent and, where possible, eliminate disproportionate environmental
122 burdens and pollution imposed on low-income communities and communities of color
123 pursuant to standards of Environmental Justice.

124 5. Enhance, protect and preserve the environment for the benefit of all present and
125 future residents, regardless of race, income, ethnicity or national origin.

126 6. Provide complete and accurate information on potential human health and
127 environmental impacts associated with municipal decisions.

128 7. Examine reasonable alternatives and select the alternative with the least
129 harmful impact on human health and the environment, including the alternative of taking
130 no action, wherever authorized by law and practicable to do so.

131 8. Promote public participation and transparent decision-making as critical to
132 identifying risks to health and the environment and to selecting alternatives that avoid or
133 minimize such risks.

134 **1.0-2 IMPLEMENTATION OF POLICY**

135 **A. Environmental Community Impact Statement (ECIS):**

136 1. Each application for approval of a development or subdivision approval and
137 each redevelopment initiative pursuant to the LRHL shall include preparation and
138 submission of an ECIS, as an integral part of its application for approval or designation,
139 pursuant to the standards and criteria in this ordinance and the principles of
140 Environmental Justice.

141 2. The ECIS shall accompany the application or redevelopment initiative
142 throughout the review process and shall be an official part of the record subject to such
143 public hearing and notice as authorized by law.

144 3. Each ECIS shall satisfy the informational requirements set forth in this
145 ordinance, including those items identified in the “checklist” in order for an application or
146 approval of a redevelopment initiative to be declared complete for review, public notice
147 and hearing.

148 4. A minimum of five (5) conforming copies of the ECIS shall be forwarded to the
149 Environmental Commission, the Office of the Public Advocate, and the Board of Public
150 Health at the earliest possible opportunity, and the same shall be posted on a readily
151 accessible Internet webpage or website.

152 5. In the event that the applicant or proponent fails to submit a reasonably
153 complete ECIS, subject to the right of the applicant to be excused from any informational
154 requirement that is unduly burdensome or not relevant to the decision at issue, the land
155 use board or other entity as the case may be, may dismiss the application or terminate the
156 initiative without prejudice.

157 6. The ECIS shall address each item in the enclosed Checklist, and such other
158 requirements as the board shall designate from time to time, subject to reasonable waiver
159 opportunities.

160 7. The ECIS shall incorporate by reference relevant portions of the most recent
161 Natural Resource Inventory or Environmental Resource Inventory or such other official
162 documents or plans or studies as may be developed by the Environmental Commission or
163 the municipal planning department, including but not limited to:

164 a. the municipal Master Plan, as prepared and adopted pursuant to N.J.S.A.
165 40:55D-28, et seq., provided, however that

166 b. the information so incorporated remains timely and accurate as to each item
167 incorporated, and

168 c. provided further that the incorporated sections shall be made a physical part of
169 the ECIS such that a reader will have access to all relevant information in one publication
170 or on the Internet in one place.

171 8. The application shall supply not less than five (5) copies of the ECIS for public
172 review at a convenient location to be determined by the reviewing agency and shall also
173 publish the ECIS on a generally available Internet website or webpage.

174 9. The informational requirements of the ECIS shall generally follow the
175 standards of the National Environmental Policy Act (NEPA) and the regulations of the
176 Council on Environmental Quality (CEQ) for preparation of an Environmental Impact
177 Statement (EIS), pursuant to Section 102(2)C, 42 U.S.C. Sec. 4321, et seq., except that
178 the applicant may be excused from any unduly burdensome or irrelevant requirements,
179 which request to the reviewing agency or entity shall be promptly determined after notice
180 to and consultation with the Environmental Commission, and which request will not be
181 unreasonably withheld.

182 10. The ECIS shall include and provide a detailed statement and analysis of:

183 a. the environmental and public health impacts of the proposed development, in
184 comparison to a “baseline” of such information describing current conditions of the site,
185 and including:

186 (1) both positive and negative impacts, and

187 (2) any cumulative impacts which, when viewed in isolation, may be considered
188 insignificant but when viewed in combination with prior or planned development and
189 ongoing activities or reasonably foreseeable activities, may prove to be detrimental;

190 (3) any adverse effects which cannot reasonably be avoided should the proposed
191 application or project be approved as filed, taking into account practicable and feasible

192 mitigation measures, including mitigation that may offset existing impacts through a “net
193 impact” assessment;

194 (4) any reasonable alternatives to the proposed development project or
195 redevelopment initiative or portion thereof, including identification and consideration of
196 alternatives which do not require such development or redevelopment approvals or which
197 can be effectuated with lesser environmental impact, including the implementation of
198 offsite remediation or mitigation through a “net impact” assessment;

199 (5) any potentially irreversible environmental and health impacts and commitments
200 of resources which cannot feasibly be avoided if the preferred development application is
201 approved; and

202 (6) any negative environmental and public health impacts which may
203 disproportionately affect lower income areas or areas of racial, ethnic or minority
204 concentration or otherwise contravene the principles of Environmental Justice as
205 summarized in Executive Order No. 12898 and as updated;

206 11. Because the ECIS shall have substantive legal effect, it follows that:

207 a. a failure of the applicant or proponent to select an alternative which, as
208 identified in the ECIS, is practicable and feasible, reasonably affordable, and less harmful
209 to the environmental and public health shall be a basis for rejection of the development
210 application, if authorized by governing law; or

211 b. the land use board or other agency reviewing the application may condition its
212 approval on the applicant agreeing to such mitigation measures as will lesson harm to the

213 environment, taking account all reasonable costs and benefits of same, if authorized by
214 governing law.

215 12. An application for a development or redevelopment project deemed
216 “inherently beneficial” as a matter of law may be excused from this ECIS requirement or
217 any portion thereof, upon request of the applicant for same and a determination being
218 made that the development qualifies as “inherently beneficial,” except that such
219 development may not be excused from the requirement to address determinants of health.

220 **B. Measuring Progress**

221 1. To measure progress toward the goal of maintaining a healthy, viable
222 environment for current and future generations, and to enable analyses of cumulative
223 impacts, the Township will, subject to budgetary limitations and priorities, develop and
224 publish an Environmental and Health Conditions inventory at the level of the census
225 block group, to be published within twelve (12) months from the time this ordinance, and
226 to be updated and published with the annual budget report every year thereafter, unless
227 such Environmental and Health Conditions inventory is included within the Township’s
228 Natural Resources Inventory or Environmental Resources Inventory or other such
229 published assessment of same.

230 2. The inventory will include at least these items on the checklist, as set forth in
231 the definitions section of this ordinance.

232 3. The preparation of this inventory may be assigned to the Environmental
233 Commission or the Planning Board individually or jointly.

234 4. The inventory shall be incorporated in the ECIS.

235 **C. Evaluating New Projects: The Checklist**

236 New projects will be evaluated for their effect on existing conditions, using the
237 checklist of existing conditions in the affected neighborhood or community, and specific
238 impacts of the proposal on checklisted items..

239 1. A Health Impact Assessment will be completed for any proposed action that
240 could negatively alter the determinants of health, except to the extent that such an
241 assessment is part of the ECIS or other published source. The cost of such analyses will
242 be borne by the owners of the proposed projects, to the extent permitted by law.

243 2. The checklist and Health Impact Assessment will evaluate whether the
244 proponent of a project can show that the proposal will worsen health or the environment.

245 3. Municipal decisions will be revisited whenever the Health Impact Assessment
246 is updated, to evaluate whether prior decisions have produced the results anticipated or
247 predicted, and if remedial actions are necessary.

248 **D. Monitoring Existing Facilities**

249 1. Subject to budgetary limitations, the Township shall provide for monitoring
250 existing facilities and activities for compliance with this ordinance.

251 2. Monitoring results will be made available on paper in the local public library
252 and on the Township's website.

253 **E. Remedial Actions**

254 1. In any communities within the Township that are disproportionately burdened
255 by pollution, or are particularly vulnerable to harm, the Township will work to improve
256 existing conditions by reducing and eliminating negative impacts on the determinants of
257 health to the fullest extent practicable and authorized by law.

258 2. In furtherance of this objective, the Township will annually solicit the findings
259 and recommendations of the Board of Health, the Environmental Commission, and
260 interested, community organizations, including but not limited to houses of worship,
261 advocacy groups, and members of the general public, and may hold public hearings
262 thereon.

263 **F. Definitions**

264 **1. Communities:**

265 Means discrete areas of a municipality, such as neighborhoods, housing
266 developments or subdivisions, public housing projects or other predominantly residential
267 sectors that generally share certain commonly-held characteristics, such as geographic
268 proximity, lower income, race or ethnicity within a particular area.

269 **2. Cumulative impacts**

270 The cumulative impact of an action is the incremental impact of the action which
271 if viewed separately may be insignificant but when added to past, present, and reasonably
272 foreseeable future actions can have significant impact on the environment and
273 determinants of health as those determinants are recognized by the U.S. Department of
274 Health and Human Services.

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3. Determinants of Health

The U.S. Department of Health and Human Services defines determinants of health to include, consideration of impacts on:

- a. The Natural environment, such as plants, weather, or climate change
- b. The as-built environment, such as buildings or transportation, worksites, schools, and recreational settings, housing, homes, and neighborhoods.
- c. Exposure to toxic substances and other physical hazards
- d. Physical barriers, especially for people with disabilities
- e. Aesthetic elements, such as good lighting, trees, or benches
- f. Availability of resources to meet daily needs, such as educational and job opportunities, living wages, or healthful foods.
- g. Social norms and attitudes, such as discrimination
- h. Exposure to crime, violence, and social disorder, such as the presence of trash
- i. Social support and social interactions
- j. Exposure to mass media and emerging technologies, such as the Internet or cell phones.
- k. Socioeconomic conditions, such as concentrated poverty
- l. Quality schools
- m. Transportation options
- n. Public safety
- o. Residential segregation

296 p. Disproportionate Impact

297 **4. The Environment**

298 The environment includes both the natural and man-made environment, and
299 including the determinants of health for neighborhoods and communities, and impacts on
300 associations and cultural values.

301 **5. The Checklist**

302 a. **Air:** air pollution sources & background ambient conditions

303 b. **Water:** includes water discharge sources, stormwater controls and
304 management, point sources and nonpoint sources of water pollution

305 c. **Land:** includes soils, farmland, woodlands, wetlands, open space, recreational
306 space, landscapes and viewsapes

307 d. **Quality of life:** includes, smells, dust, smoke, vapors, gases, noise, vibration,
308 glare, heat, rodents, mosquitoes, other vectors; presence or absence of trees and
309 other vegetation

310 e. **Waste:** includes industrial waste, waste facilities, sewage, litter

311 f. **Urban design:** includes consideration of walkability, dangerous intersections,
312 barriers dividing neighborhoods, pedestrian safety, visual blight, empty lots,
313 abandoned structures, traffic congestion,

314 g. **Environmental Justice:** includes the principles set forth in presidential
315 Executive Order No. 12898 and as further clarified in relevant updates and
316 implementing publications of the United States Environmental Protection Agency

317 (EPA) regarding the disproportionate or disparate negative impact of diverse
318 governmental decisions and initiatives including but not limited to decisions
319 respecting pollution discharge permits, development applications and
320 redevelopment initiatives and other governmental action which may predominantly
321 impact lower-income or minority neighborhoods, communities, neighborhoods and
322 vulnerable populations therein

323 h. **The Applicant:** includes review of its compliance record with respect to
324 assurances provided by the applicant in other or prior applications and with
325 existing laws or regulations protecting the environmental and public health, or
326 conditions for the receipt of tax abatements and any other municipal gratuities or
327 inducements which may be relevant to the decision at issue

328 **6. Inherently Beneficial:**

329 Means a project, facility, development or redevelopment which has been declared
330 by courts of competent jurisdiction or by legislation to inherently serve the public good
331 such that certain regulatory impediments should be minimized in order to promote or
332 facilitate such project, development or redevelopment, and which include but are not
333 necessarily limited to child care facilities, lower income or subsidized housing, group
334 homes for the disabled, schools, hospitals, homes for the aged, assisted living facilities,
335 places of worship, and renewable energy facilities, but shall not include certain public
336 facilities of a non residential or industrial nature, such as sewage treatment plants or cell
337 tower installations.

338 **7. Net Impact Assessment:**

339 Means a mode or methodology for quantifying or calculating the overall
340 environmental and health impact of an activity through such action as authorizing an
341 applicant to offset certain increases in impacts on-site by making or offering to make
342 additional and increased reductions of the same impacts offsite, provided that such net
343 impact assessment or offsets will not be authorized to trade off the environment or public
344 health of one community or neighborhood for the benefit of another, thereby creating
345 undue concentrations of impacts known as “hot spots” in the impacted area

346 **2.0: Establishment of the Office of Municipal Public Advocate; delineation of**
347 **qualifications, and powers and duties:**

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349 A. There is hereby established the Office of the Municipal Public Advocate for
350 the purpose of assisting the Township in the implementation and enforcement of this
351 Ordinance and related rules and regulations.

352
353 B. Appointment and Compensation:

354 1. The Governing Body of the Township shall appoint a qualified attorney to serve
355 as the Municipal Public Advocate after soliciting candidates to consider on the basis
356 solely of relative merit and after an open competitive basis.

357 2. The Public Advocate may be a nonprofit or public-interest law firm or similar
358 association dedicated to protection of the environment and public health.

359 3. The compensation of the Public Advocate shall be set by the Governing Body
360 and be sufficient to attract a qualified person for the position, and shall not be reduced
361 during his or her term in office.

362 4. The Public Advocate shall serve at the pleasure of the Governing Body but may
363 be removed for good cause shown which shall not include the assertion of a politically
364 unpopular position on any matter within the jurisdiction of the office.

365 5. The Planning Board and Zoning Board may include such funding as may be
366 appropriate for the Public Advocate to appear before such board within its schedule of
367 “escrow fees,” as authorized by N.J.S.A. 40:55D-53.1, et seq.

368 C. Qualifications:

369 1. The Public Advocate shall be an attorney at law in good standing in the State of
370 New Jersey with at least five (5) years of experience.

371 2. The Public Advocate shall be substantially qualified by education and
372 experience in the areas of legal practice relevant to its duties, which include but are not
373 limited to

374 a. Land use law including zoning, rezoning, variances, site plans, subdivision
375 reviews, planning and stormwater.

376 b. Litigation and appeals from decisions of Planning Boards and Zoning Boards,
377 both to uphold or to contest any such decision, as the case may be.

378 c. Environmental law and practice

379 d. Public health law and practice.

380 D. Duties and Powers: The Public Advocate shall:

381 1. Take such action as permitted by law to enforce this ordinance or law or rule or
382 regulation related thereto, including the Environmental Rights Act, N.J.S.A. 2A:35A-1, et
383 seq.

384 2. Appear before the Planning Board, and the Zoning Board to present argument
385 and evidence with respect to any pending major development application.

386 3. Represent residents, communities and neighborhoods regarding any application
387 for major development located within such community or neighborhood of the Township,
388 on petition by representatives of such community or neighborhood.

389 4. File and argue appeals in any court with subject matter jurisdiction as deemed
390 necessary to implement or enforce this Ordinance.

391 5. Collect fees for reimbursement of the Township or “escrow fee” account, as the
392 “prevailing party” under any relevant statute or Rule of Court providing for such fee
393 shifting.

394 6. Take such other action as necessary and appropriate to carry out the foregoing
395 duties and powers.

396 7. This being a remedial ordinance, the powers of the Public Advocate shall be
397 liberally construed.

398 **3.0. Powers of the Board of Public Health:**

399 A. Pursuant to the “Local Public Health Services Act,” N.J.S.A. 26:3A2-1, et seq.,
400 each county and municipality is authorized and empowered to establish a board of public
401 health.

402 B. If the Township has not established a board of public health, pursuant to law, it
403 shall do so within ninety (90) days.

404 C. Among the duties of such board of public health, the board shall have authority
405 to implement and enforce any provision of this ordinance related to protection of public
406 health through appropriate action, provided that the Township or Public Advocate is not
407 actively enforcing the same at that time.

408 **4.0. Property Taxation:**

409 A. The taxation of realty or “real property” (land, buildings and fixtures), which
410 is the principal means of supporting the expenses of local government and public
411 education and county services, requires periodic valuation or revaluation of property
412 values within the Township for purposes of tax assessments.

413 B. The process of valuation or revaluation of property may be performed by a
414 variety of generally accepted methodologies or techniques by competent personnel and
415 qualified consultants retained for that purpose.

416 C. However, because certain methodologies of valuation or revaluation, including
417 but not necessarily limited to the “Extraction Method,” have been shown to shift or
418 transfer tax burdens from predominantly higher income property owners and areas to
419 predominantly lower income property owners and minority areas, the Township shall.

420 1. Select that methodology which is both legally acceptable and is least likely to
421 lead to disproportionate shifting of tax burdens to lower income property owners, and

422 2. Closely monitor the process of property valuation and revaluation to assure
423 transparency, fairness and equity to the fullest extent permitted by law.

424 **5.0. Effectiveness date:**

425 This ordinance shall take effect no sooner than the ninetieth (90) day after the
426 publication of notice of the enactment of this Ordinance, except that the Governing Body
427 and other affected boards shall, upon enactment, take such steps as necessary to
428 commence the process of implementing this ordinance immediately after the date of
429 effectiveness.

430 **6.0 Severability:**

431 If any portion, clause, or section or subsection of this ordinance is determined by a
432 court of competent jurisdiction to be unlawful, ultra vires or unenforceable, it is the
433 intention of the Township that the remaining portions remain and be severed from the
434 portion struck down by the court.